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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,753

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Robert Du

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INTEL/BSTZ

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EXAMINER

ABEBE, DANIEL DEMELASH

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,753	<b>Applicant(s)</b> DU ET AL.	
	<b>Examiner</b> Daniel D. Abebe	<b>Art Unit</b> 2626	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 and 9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 is rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent<sup>1</sup> and recent Federal Circuit decisions<sup>2</sup> indicate that a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim recites a series of steps or acts to be performed, the claim neither transforms underlying subject matter nor positively ties to another statutory category that accomplishes the claimed method steps, and therefore does not qualify as a statutory process. The claimed method of evaluating spoken utterance for accuracy is of sufficient breadth that it would be reasonably interpreted as a series of steps completely performed manually without the use of a particular machine.

for example the recited step of recording a spoken utterance, could be manually performed using a recording device and pressing the record button, evaluating the recorded utterance speed and accuracy could be performed by a person by playing

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<sup>1</sup> *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

<sup>2</sup> *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

Art Unit: 2626

back the recorded utterance and listening to it and the step of assigning a score can also be manually performed using pencil and paper or other means.

With regard to claim 9, according to the specification its mentioned where the program may be transferred from a remote computer or controller to a requesting computer or controller by way of data signals embodied in a carrier wave or other propagation medium. Thus the machine readable medium as claimed encompasses signals which are unpatentable subject matter under 35 USC 101.

The examiner suggests the applicant to amend the "machine-readable medium" to "non-transitory machine readable medium", in order to specifically recite the statutory media.

### ***Claim Rejections - 35 USC § 112***

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. the specification doesn't adequately describe the means for or the steps performed for processing, analyzing the spoken utterance to obtain the spoken utterance and duration or how the utterances are processed and obtained other than comparing the results to assess the utterance accuracy and speed.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

Art Unit: 2626

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Hansen et al. (2004/0193409).

As to claim 1, Hansen teaches, in a voice interactive language instruction, a reading quality evaluation system and method (**Figs.3**), comprising the steps of:

Playing a benchmark pronunciation (304)

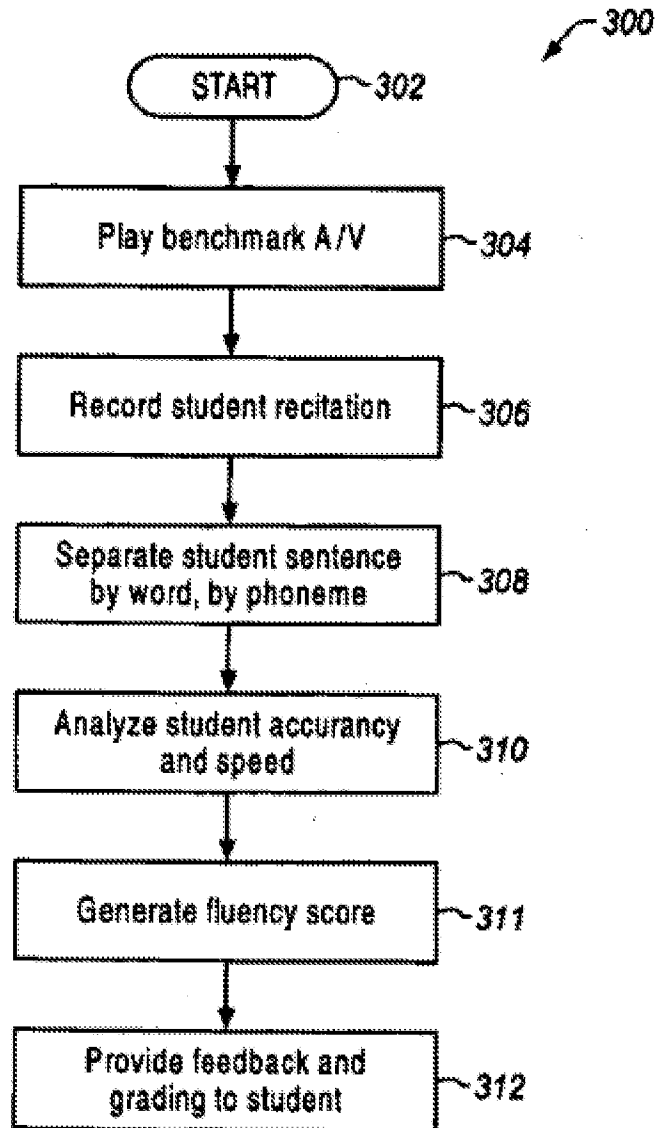
Recording/receiving an utterance from a person (306);

Assessing the utterance for accuracy (310);

Assessing the utterance duration/speed (310); and

Assigning a speech fluency score based on the result of the accuracy and the speed (311)

**FIG. 3**



As to claim 2, Hansen teaches wherein the spoken utterance comprises a pre-selected recitation of a sentence in a spoken language (304).

As to claim 3, Hansen teaches playing a benchmark audio-video (304) to a client via a computing device the benchmark audio comprising sentences to be learned/pronounced by the client and wherein the client speech is compared to benchmark/standard speech to generate the fluency score (Par.0038, 0080).

As to claim 4, Hansen teaches where the trainee is provided with a feedback and grading (312).

As to claim 5, Hansen teaches a server system, network a communication mechanism that allows server system to communicate with one or more students for presenting the assessment as well as where the result is communicated (Par.0007; Fig.2).

As to claim 6, Hansen teaches where Once the fluency are obtained they are compared to benchmarks and standard ranges for fluency and once the comparison is made a report is provided that indicates a fluency of the individual, which may be used for class placement, training, and the like (Par.0080).

As to claim 7, Hansen teaches a system and method for assessing temporality in speech fluency comprising playing a benchmark pronunciation, recording the student recitation, analyzing the recitation for speed and accuracy where the analysis is performed by comparing the tempo of the speech to a benchmark/standard speech (Figs.1-9, Par.0038, 0080).

As to claim 8, Hansen teaches dynamically measuring and analyzing temporality in an individual's speech wherein the utterance, comprising phrases, is separated into words or phonemes and their corresponding speed (Par.0038, Fig.3, 308).

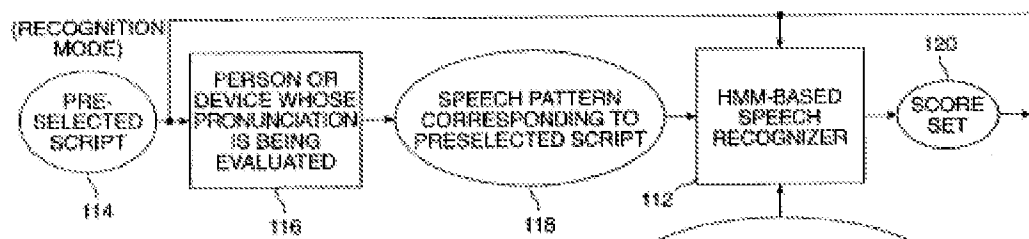
Art Unit: 2626

With regard to claims 9-20, the corresponding machine readable medium, storing the program to perform the steps claimed above in the method claims, and the apparatus to perform the same, are analogous and therefore rejected as being anticipated by Hansen for the foregoing reasons.

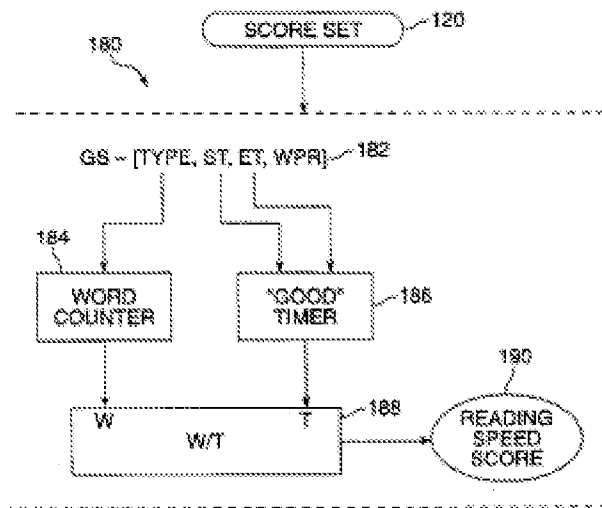
### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rtischew et al. 5,634,086.

Rtischew teaches a language instruction system wherein a speech script is presented to the trainee (118), recording the spoken utterance (118), determining the accuracy (112) of the utterance, using speech recognition and the duration (188) of the utterance and evaluating and assigning score (190) according to the evaluation of the accuracy and the speed and providing the result (Fig.3, 9)







Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel D. Abebe whose telephone number is 571-272-7615. The examiner can normally be reached on monday-friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Hudspeth can be reached on 571-272-7843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2626

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Daniel D Abebe/  
Primary Examiner, Art Unit 2626